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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 Chuck Larson,

17 Plaintiff,

18 vs.

19 Total Recovery Solutions, LLC; and
DOES 1-10, inclusive,

20 Defendants.
21
22

Case No.: 5:13-cv-04840

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.
3. VIOLATION OF TELEPHONE
CONSUMER PROTECTION ACT 47
U.S.C. § 227 ET. SEQ

JURY TRIAL DEMANDED

1 For this Complaint, the Plaintiff, Chuck Larson, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA"), and the
8 invasions of Plaintiff's personal privacy by the Defendants and its agents in their
9 illegal efforts to collect a consumer debt.
10

11 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
12

13 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
14 Defendants transact business here and a substantial portion of the acts giving rise to
15 this action occurred here.
16

17 **PARTIES**

18 4. The Plaintiff, Chuck Larson (hereafter "Plaintiff"), is an adult individual
19 residing in San Jose, California, and is a "consumer" as the term is defined by 15
20 U.S.C. § 1692a(3) and is a "person" as defined by 47 U.S.C. § 153(10).
21

22 5. Defendant Total Recovery Solutions, LLC ("TRS"), is a Missouri
23 business entity with an address of 3543 Broadway, Kansas City, Missouri 64111,
24 operating as a collection agency, and is a "debt collector" as the term is defined by 15
25 U.S.C. § 1692a(6) and is a "person" as defined by 47 U.S.C. § 153(10).
26
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1 6. Does 1-10 (the “Collectors”) are individual collectors employed by TRS
2 and whose identities are currently unknown to the Plaintiff. One or more of the
3 Collectors may be joined as parties once their identities are disclosed through
4 discovery.
5

6 7. TRS at all times acted by and through one or more of the Collectors.
7

8 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

9 **A. The Debt**

10 8. The Plaintiff allegedly incurred a financial obligation (the “Debt”) to a
11 creditor (the “Creditor”).
12

13 9. The Debt arose from services provided by the Creditor which were
14 primarily for family, personal or household purposes and which meets the definition
15 of a “debt” under 15 U.S.C. § 1692a(5).
16

17 10. The Debt was purchased, assigned or transferred to TRS for collection, or
18 TRS was employed by the Creditor to collect the Debt.
19

20 11. The Defendants attempted to collect the Debt and, as such, engaged in
21 “communications” as defined in 15 U.S.C. § 1692a(2).
22

23 **B. The Facts**

24 12. Within the last year, TRS contacted Plaintiff in an attempt to collect the
25 Debt.
26
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1 13. TRS called Plaintiff at an excessive rate, placing approximately two calls
2 per day, multiple days per week for several weeks.

3
4 14. During the initial conversation, TRS advised Plaintiff that the call was
5 being recorded. Plaintiff objected to the call being recorded and stated he would not
6 agree to being recorded. In response, TRS stated "Too bad," and continued to attempt
7 to collect the Debt.
8

9 15. TRS spoke with Plaintiff in a loud tone and aggressive manner in an
10 effort to intimidate Plaintiff into making immediate payment of the Debt. Plaintiff
11 continued to object to being recorded and TRS refused to comply with interrupting
12 and talking over Plaintiff while Plaintiff was attempting to ask questions about the
13 Debt.
14
15

16 16. TRS demanded that Plaintiff make payment of the Debt. Plaintiff
17 requested proof of the Debt and requested that he see something in writing. Rather
18 than advise Plaintiff the proper method to dispute the Debt in writing, TRS instead
19 continued to demand payment and threatened to take legal action against Plaintiff if
20 the Debt was not paid immediately.
21
22

23 17. After a heated conversation, Plaintiff instructed TRS to stop calling.

24 18. Rather than honor Plaintiff's request, TRS thereafter called Plaintiff on
25 his cellular telephone at an annoying and harassing rate, sometimes calling multiple
26 times a day.
27
28

1 19. When Plaintiff answered the calls from TRS, most often there was no
2 representative available with whom Plaintiff could speak and Plaintiff heard only dead
3 air.
4

5 20. TRS failed to inform Plaintiff of his rights by written correspondence
6 within five days after the initial contact as it is required by law.
7

8 **COUNT I**
9 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**
10 **15 U.S.C. § 1692, et seq.**

11 21. The Plaintiff incorporates by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13 22. The Defendants engaged in behavior the natural consequence of which
14 was to harass, oppress, or abuse the Plaintiff in connection with the collection of a
15 debt, in violation of 15 U.S.C. § 1692d.
16

17 23. The Defendants caused a phone to ring repeatedly and engaged the
18 Plaintiff in telephone conversations, with the intent to annoy and harass, in violation
19 of 15 U.S.C. § 1692d(5).
20

21 24. The Defendants used false, deceptive, or misleading representation or
22 means in connection with the collection of a debt, in violation of 15 U.S.C. § 1692e.
23

24 25. The Defendants misrepresented the character and legal status of the debt,
25 in violation of 15 U.S.C. § 1692e(2).
26
27
28

4 27. The Defendants employed false and deceptive means to collect a debt, in
5 violation of 15 U.S.C. § 1692e(10).

28. The Defendants used unfair and unconscionable means to collect a debt,
in violation of 15 U.S.C. § 1692f.

9 29. The Defendants failed to send Plaintiff an initial letter within five days of
10 its initial contact with Plaintiff as required by law, in violation of 15 U.S.C. §
11 1692g(a).
12

30. The foregoing acts and omissions of the Defendants constitute numerous
and multiple violations of the FDCPA, including every one of the above-cited
provisions.

31. The Plaintiff is entitled to damages as a result of the Defendants' violations.

COUNT II
VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788 *et seq.*

32. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

1 33. The Rosenthal Fair Debt Collection Practices Act, California Civil Code
2 section 1788 *et seq.* (“Rosenthal Act”) prohibits unfair and deceptive acts and
3 practices in the collection of consumer debts.
4

5 34. Total Recovery Solutions, LLC, in the regular course of business,
6 engages in debt collection and is a “debt collector” as defined by Cal. Civ. Code §
7 1788.2(c).
8

9 35. The Defendants caused a telephone to ring repeatedly and engaged the
10 Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation
11 of Cal. Civ. Code § 1788.11(d).
12

13 36. The Defendants communicated with the Plaintiff with such frequency as
14 to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).
15

16 37. The Defendants failed to comply with the provisions of 15 U.S.C. §
17 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.13(e).
18

19 38. The Defendants falsely represented that a legal proceeding had been or
20 was about to be instituted unless the debt was paid immediately, in violation of Cal.
21 Civ. Code § 1788.13(j).
22

23 39. The Defendants did not comply with the provisions of Title 15, Section
24 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.

25 40. The Plaintiff is entitled to damages as a result of the Defendants’
26 violations.
27
28

COUNT III
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.

41. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. At all times mentioned herein and within the last four years, Defendants called Plaintiff on her cellular telephone using an automatic telephone dialing system (“ATDS” or “Predictive Dialer”) and/or by using a prerecorded or artificial voice.

43. The Federal Communications Commission (FCC) explains ATDS in the context of using a Predictive Dialer, stating “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”*2003 TCPA Order*, 18 FCC 36 Rcd 14022. The FCC explains that if a representative in not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

44. Defendant’s telephone systems have all the earmarks of an ATDS/Predictive Dialer.

1 45. Often times when Plaintiff answered the phone, Defendants' telephone
2 system did not connect the call to a live representative and the phone system would
3 terminate the call.
4

5 46. Other times when Plaintiff answered the phone, she was met with a
6 period of silence before Defendants' telephone system would connect her to the next
7 available representative.
8

9 47. Often times when Plaintiff answered the phone, she would hear a period
10 of silence and was required to say "hello" several times before Defendants' phone
11 system would connect Plaintiff to the next available representative.
12

13 48. Defendants' Predictive Dialers have the capacity to store or produce
14 telephone numbers to be called, using a random or sequential number generator.
15

16 49. Plaintiff never provided his cellular telephone number to TRS and never
17 provided his consent to TRS to be contacted on his cellular telephone, and in fact
18 directed TRS to stop calling.
19

20 50. Upon information and belief, Plaintiff did not provide his consent to the
21 Creditor to be contacted on his cellular telephone.
22

23 51. If TRS at one time had consent to place calls to Plaintiff's cellular
24 telephone number, it no longer had consent to call Plaintiff after being instructed by
25 Plaintiff to cease all calls to him.
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1 52. The telephone number called by Defendant was assigned to a cellular
2 telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47
3 U.S.C. § 227(b)(1).
4

5 53. The calls from Defendant to Plaintiff were not placed for “emergency
6 purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).
7

8 54. Without prior consent the Defendants contacted the Plaintiff by means of
9 automatic telephone calls or prerecorded messages at a cellular telephone or pager in
10 violation of 47 U.S.C. § 227(b)(1)(A)(iii).
11

12 55. Defendants placed automatic telephone calls to Plaintiff’s cellular
13 telephone knowing that it lacked consent to call his number. As such, each call placed
14 to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to
15 treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).
16

17 56. As a result of each call made in negligent violation of the TCPA, Plaintiff
18 is entitled to an award of \$500.00 in statutory damages for each call in violation of the
19 TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
20

21 57. As a result of each call made in knowing and/or willful violation of the
22 TCPA, Plaintiff is entitled to an award of treble damages in an amount up to
23 \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
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COUNT IV
INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

58. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

59. The Restatement of Torts, Second, § 652B defines intrusion upon seclusion as, “One who intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person.”

60. California further recognizes the Plaintiff’s right to be free from invasions of privacy, thus the Defendants violated California state law.

61. The Defendants intentionally intruded upon Plaintiff’s right to privacy by continually harassing Plaintiff with the above referenced telephone calls.

62. The telephone calls made by the Defendants to Plaintiff were so persistent and repeated with such frequency as to be considered, “hounding the plaintiff,” and, “a substantial burden to her existence,” thus satisfying the Restatement of Torts, Second, § 652B requirement for an invasion of privacy.

63. The conduct of the Defendants in engaging in the illegal collection activities resulted in multiple invasions of privacy in such a way as would be considered highly offensive to a reasonable person.

64. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from the Defendants.

65. All acts of the Defendants and its agents were committed with malice, intent, wantonness, and recklessness, and as such, the Defendants are subject to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

- A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the Defendants;
- B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against the Defendants;
- C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against the Defendants;
- D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- E. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- F. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
- G. Actual damages from the Defendants for the all damages including emotional distress suffered as a result of the intentional, reckless, and/or negligent FDCPA violations and intentional, reckless, and/or negligent

1 invasions of privacy in an amount to be determined at trial for the
2 Plaintiff;

3
4 H. Punitive damages; and

5 I. Such other and further relief as may be just and proper.
6

7 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

8
9 DATED: October 18, 2013

TAMMY HUSSIN

10 By: /s/ Tammy Hussin
11 Tammy Hussin, Esq.
12 Lemberg & Associates, LLC
13 Attorney for Plaintiff Chuck Larson
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